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FILED

2011 FEB -7 P 1:34

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 *CHK*
12
13 ARCHIE OVERTON,
14 Pro Se,

15 By Special Appearance

16 vs.

17 YOLANDA BALDOVINOS, et al.,

18 Respondents.

Case No. 5:10-cv-02507-LHK-PSG

NOTICE OF MOTION AND MOTION
TO QUASH SUBPOENA AND FOR A
PROTECTIVE ORDER AND REQUEST
FOR SANCTIONS

Fed. R. Civ. P. 26(c) and 45(c)(3) and
45(d)(2) and Federal Rules of Evidence 501
and Sanctions pursuant to Fed. R. Civ. P.37

Date: March 15, 2011
Time: 10:00a.m.
Dept.: Ctrm 5, 4th Fl.
Judge: Hon. Paul Singh Grewal

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23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 Pursuant to Federal Rules of Civil Procedure 26(c) and 37, 45(c)(3), and Federal
25 Rules of Evidence 501, Archie Overton¹ ("Overton") moves this Court, at its scheduled
26 hearing on March 15th, 2011, to quash subpoenas for "medical records, including any
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28 ¹ Archie Overton, hereafter Archie or Overton.

1 psychiatric or psychological treatment and treatment for substance abuse" issued by the
2 County of Alameda ("County") for constitutionally protected confidential records of non-
3 party Overton and sent to third non-party medical, and mental health providers of
4 Overton.

5 Overton also moves for a protective order preventing the County from seeking
6 medical records of Overton in the future. Overton also moves for sanctions against the
7 County for reimbursement of expenses, abuse of process and to restore the dignity of this
8 Court.

9 Overton requests, in this special appearance, without granting jurisdiction of his
10 person for this motion that this motion be heard simultaneously before Magistrate Judge
11 Paul Singh Grewal on March 15th, 2011, the date set by this Court to hear the other
12 outstanding motions to quash, and in compliance with Magistrate's Grewal's order, dated
13 February 2nd, 2011. To be heard at the same date and time as the underlying attorneys
14 who will be discussing the same subject for their clients in order to conserve judicial and
15 litigant resources.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 The County recently issued a number of subpoenas dated December 1, 2010 and January
19 19, 2011 to third-party medical, and mental health providers of Overton. Overton is not a party to
20 this action. The County seeks these records to, *ex-post facto*, somehow bolster proof of their
21 actions in the State Court juvenile proceedings, the medical records sought are irrelevant to any
22 of the juvenile proceedings, or to the proceedings before this Court.

23 The records and documents the County seeks are constitutionally protected, confidential
24 medical records, under doctor-patient privilege and/or psychotherapist-patient privilege under the
25 Fourth Amendment of the United State Constitution, and Federal Rules of Evidence, rule 501.
26 The privilege belongs to Overton and Overton objects to this fishing expedition and does not
27 grant consent to his confidential records. County Counsel knew or should have known that these
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1 records cannot be compelled under the circumstances of this case. County Counsel never even
2 made a courtesy call to Mr. Overton seeking his consent.

3 Rather, in a continuing pattern of abuse of citizen rights, County Counsel
4 overburdened Mr. Overton by their overreaching with the subpoena power of the Court
5 seeking medical records that could not, and do not, have ANY possible bearing in the
6 case at bar, that are protected confidential records that cannot be compelled by this Court
7 or any other, as explained by the United States Supreme Court, cited below.

8 Overton has incurred lost wages and has had noted on his employment record an
9 unscheduled occurrence of missing work, requirements of his union contract, because he
10 must respond and appear to defend against this completely unnecessary subpoena action
11 instigated by Alameda County through County Counsel.

12 Overton requests that this Court quash the subpoena's, issue a protective order to
13 prevent future invasions of his privacy, and issue sanctions against County Counsel
14 and/or the County of Alameda for the expenses he has incurred, and for abuse of process.
15 Overton, who is Pro Se, will leave it to the discretion of this Court as to whom this Court
16 determines is responsible for the reimbursing Mr. Overton's expenses. Finally, Overton
17 pleads for this Court to do something to reign in the conduct of County Counsel, whose
18 continued habits of harassment and abuse of law abiding citizens seems to know no
19 bounds.

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21 Overton, who could have been asked by County Counsel for consent to these
22 records, was not asked. It is well settled and established by the common law that such
23 records are protected, confidential and may not be subject to compelled disclosure against
24 Overton's refusal to grant consent. Jaffee v Redmond, 518 U.S. 1 (1996) (quoting the
25 holding.....below, in relevant part...)

26 “(b) Significant private interests support recognition of a psychotherapist
27 privilege. Effective psychotherapy depends upon an atmosphere of confidence and
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1 trust, and therefore the mere possibility of disclosure of confidential
 2 communications may impede development of the relationship necessary for
 3 successful treatment. The privilege also serves the public interest, since the mental
 4 health of the Nation's citizenry, no less than its physical health, is a public good of
 5 transcendent importance. In contrast, the likely evidentiary benefit that would
 6 result from the denial of the privilege is modest. That it is appropriate for the
 7 federal courts to recognize a psychotherapist privilege is confirmed by the fact that
 8 all 50 States and the District of Columbia have enacted into law some form of the
 9 privilege, see *Trammel v. United States*, 445 U.S., at 48 -50, and reinforced by the
 10 fact that the privilege was among the specific privileges recommended in the
 11 proposed privilege rules that were rejected in favor of the more open-ended
 12 language of the present Rule 501. Pp. 7-13.

13 ... The balancing component implemented by the Court of Appeals and a few
 14 States is rejected, for it would eviscerate the effectiveness of the privilege by
 15 making it impossible for participants to predict whether their confidential
 16 conversations will be protected. Because this is the first case in which this Court
 17 has recognized a psychotherapist privilege, it is neither necessary nor feasible to
 18 delineate its full contours in a way that would govern all future questions. Pp. 13-
 19 16. 51 F. 3d 1346, affirmed." [Emphasis added]

20 **II. THE SUBPOENAS RELATED TO OVERTON, WHO IS NOT A PARTY**
 21 **TO THIS CASE SHOULD BE QUASHED BECAUSE THE MEDICAL RECORDS ARE**
 22 **IRRELEVANT AND ARE PROTECTED.**

23 The medical record subpoenas related to Archie seek documents that are
 24 irrelevant, will not lead to admissible evidence, and are privileged. It is appropriate to
 25 quash "[o]verbroad subpoenas seeking irrelevant information." *Gonzalez v. Google, Inc.*,
 26 234 F.R.D. 674, 680 (N.D. Cal. 2006) (internal citation omitted). Moreover, upon a
 27 timely motion, the court issuing such a subpoena shall quash it if it determines that the
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1 subpoena "requires disclosure of privileged or other protected matter and no exception or
2 waiver applies." Fed. R. Civ. P. 45(c)(3)(A)(iii).

3 While relevance for purposes of discovery is defined broadly, the right to
4 discovery is not unlimited and does have "ultimate and necessary boundaries." *Hickman*
5 *v. Taylor*, 329 U.S. 495, 507 (1947). "Further limitations come into existence when the
6 inquiry touches upon the irrelevant or encroaches upon the recognized domains of
7 privilege." *Id.* at 508. *See also: Jaffee v Redmond*, 518 U.S. 1 (1996).

8
9 The importance of this issue is heightened by the fact that these medical records
10 are constitutionally protected and protected by the California Code of Evidence. *See*
11 *People v. Gonzales*, --- Cal.Rptr.3d ----, 2011 WL 242751, at * (6th Dist. Cal. App., Jan.
12 27, 2011) (discussing the broad scope of courts recognizing medical records privacy
13 rights, and quashing the County's medical record subpoenas); *Rangel v. American*
14 *Medical Response West*, Case No. 09-CV-01467, slip copy 2010 WL 5477675, at *4
15 (E.D. Cal. 2010) ("The burden is on the party seeking discovery of constitutionally
16 protected information to establish direct relevance."); *In re Lifschutz* (1970) 2 Cal.3d 415
17 (California Supreme Court recognizing the constitutionally protected psychotherapeutic
18 privacy right); *Fitzgerald v. Cassil*, 216 F.R.D. 632 (N.D. Cal. 2003) (quashing
19 subpoenas after concluding plaintiff had not waived the psychotherapist-patient
20 privilege); *Gardia v. San Jose State University*, Case No. C04-04086, 2007 WL 2428031
21 (N.D. Cal. 2007) (unpublished) (quashing subpoenas of medical records where health
22 was not at issue in the case); Cal. Evidence Code § 990 et seq. (creating statutory
23 medical-patient privilege and defining exceptions, which do not include juvenile
24 dependency proceedings). Considering that medical records are highly sensitive and fall
25 within the constitutionally protected zone of privacy, and would not be discoverable in
26 state court proceedings subject to California's evidence code, the Court should quash the
27 subpoenas related to Overton's medical records.
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3 **III. THE COUNTY INCORRECTLY BELIEVES THAT OVERTON'S**
4 **MEDICAL RECORDS ARE RELEVANT TO THE OUTCOME OF A CONTESTED**
5 **JURISDICTIONAL HEARING THAT WAS NEVER TRIED BY THE JUVENILE**
6 **COURT AND THAT HE IS NOT A PARTY TO.**

7 As Overton understands it, the County believes Archie's medical records may
8 reveal information that will prove that the outcome of the juvenile proceedings would
9 have been the same.

10 Even if Archie's medical records were relevant to that hearing, which they are not,
11 Overton is still is not a party to the case at hand and still holds a protected privacy interest
12 to his medical records that should not be discoverable in this case without his consent.
13 See Cal. Evid. Code § 990 et seq. (the medical privilege belongs to the patient and none
14 of the exceptions in the evidence code apply to juvenile proceedings); Cal. Rule of Court,
15 Rule 5.546, subsection (g) ("on a showing of privilege or other good cause, the court may
16 make orders restricting disclosures" in juvenile court proceedings); *In re Dolly A.* (1986)
17 177 Cal.App.3d 195, 203-04 (affirming denial of discovery of medical and other records
18 in a juvenile dependency proceedings that may be privileged); *Rudnick v. Superior Court*
19 (1974) 11 Cal.3d 924, 932-933 (court has discretion to protect privilege of absent third
20 party on its own motion). AND see Federal Rules of Evidence, Rule 501, *Jaffee v*
21 *Redmond*, 518 U.S. 1 (1996), holding that psychotherapist patient privilege records and
22 communications are protected from compelled disclosure under Rule 501.

23 **IV. ALAMEDA COUNTY KNOWS AND PARTICULARLY COUNTY**
24 **COUNSEL KNOWS THAT THERE WAS NO ABUSE AND THAT THEY HAVE**
25 **HAD IN THEIR POSSESSION INDISPUTABLE PROOF THAT NO ABUSE**
26 **OCCURRED TO THE MINOR AT THE CENTER OF THIS CASE .**

27 **SEE DOCUMENTS FILED UNDER SEAL WITH THIS MOTION**

1 1. [SEE First Document School Principal's Declaration filed under seal
2 with this Motion, AC 0003] The County has a copy, which they
3 provided in discovery in this case, of the "declaration" of the school
4 principal who claimed that the minor admitted to her that he was
5 sodomized by his "step-dad" (and it was assumed it was Mr. Overton,
6 the minor has two fathers, neither was specifically named) while his
7 mother watched. This declaration full of hearsay is inadmissible
8 evidence under the authority of the United States Supreme Court, as
9 held in Crawford v Washington, 541 U.S. 36 (2004). [Overruling the
10 "indicia of reliability" of Ohio v Roberts.]

11 a. California, however, usurps the authority of the United States
12 Supreme Court, and in this case, The Indian Child Welfare Act,
13 requiring "clear and convincing evidence; violating the civil
14 rights of the minor and his Mother, by allowing for admission of
15 hearsay in juvenile dependency proceedings, under its Welfare
16 and Institutions Code section 355, which provides that anything
17 written by the Social Workers in their reports and submitted to
18 the States Juvenile Courts is **competent evidence**, and must be
19 accepted by the Juvenile Courts.

20 2. [See Second Document filed under Seal with this Motion,
21 AUTHORIZATION FOR NON-ACUTE SEXUAL ASSUALT EXAM,
22 signed by Linda Fuchs, on December 26, 2006, AC000103] This
23 consent form was initiated by Linda Fuchs, a Social Worker with the
24 Alameda County Department of Social Services, which should have
25 lead to the examination of the minor on January 2nd, 2007. However,
26 Children's Hospital refused to conduct the exam, because Ms. Fuchs
27 was not the legal guardian or parent of the minor.
28

3. [See Third Document filed under Seal with this Motion,
AUTHORIZATION FOR NON-ACUTE SEXUAL ASSUALT EXAM,
signed by Belinda Kirk, Mother, on January 2nd, 2007, AC000104] This
consent form was secured by Linda Fuchs from the Mother immediately
after she lost custody to the Juvenile Court who took jurisdiction of the
minor at the jurisdictional hearing of January 2nd, 2007. Ms. Fuchs
knew that Mother was represented by Counsel, yet still violated
Mothers right to counsel by approaching her directly.
4. [See Third Document filed under Seal with this Motion, REPORT OF
NON-ACUTE SEXUAL ASSUALT EXAM, signed by Dr. James
Crawford, on January 16th, 2007, AC000162 and AC000163] This
report is indisputable evidence that the minor was not sexually abused
by anyone, there is more to this report, but County Counsel has so far
refused to produce either the pictures that were taken or any other
related notes, yet has ordered the hospital not to release any of this exam
to the Mother. Is this Brady v Maryland violations, or is County
Counsel exempt from these rules as well?

Mr. Overton is left to believe that County Counsel's conduct is an effort to
"protect" their client, the Social Workers of the Alameda County Department of
Social Services. County Counsel also has an ethical obligation not to pursue false
allegations or to make misrepresentations to either the State Courts or this Court.

At what point, and after how many parades before the Courts will any judicial
officer reign in this terror of conduct by County Counsel.

The above documents have been produced for this Court so that the truth might
prevail. Mr. Overton is a law abiding citizen, who has served his County

1 honorably. Mr. Overton has never been arrested, indicted, or charged with
 2 anything in his entire life. (See Overton Declaration attached.)

3 In Fact, Mr. Overton was never even listed as is "mandatory" under California
 4 Penal Code section 11165.9, if he was an alleged perpetrator of child abuse, and
 5 the allegation was either substantiated or unsubstantiated. Only those allegations
 6 determined as UNFOUNDED are not to be listed. Neither the San Leandro City
 7 Police nor Alameda County Department of Social Services has ever reported Mr.
 8 Overton to the California Department of Justice to be listed on the CACI.
 9 (California Child Abuse Central Index) See CACI Letter attached to Mr. Overton
 10 Declaration as indisputable proof.
 11

12 **V. THE COURT SHOULD ISSUE A PROTECTIVE ORDER PROHIBITING ANY**
 13 **FURTHER DISCOVERY OF ARCHIE'S MEDICAL RECORDS.**

14 For the reasons stated above, the medical records of Overton are irrelevant to the issues
 15 of this case. Overton has not waived his constitutional privacy right to these records.
 16 Accordingly, pursuant to Federal Rule of Civil Procedure 26(c), this Court should quash the
 17 subpoenas at issue here, and issue a protective order prohibiting the County from seeking his
 18 medical records to prevent undue burden of challenging (possible) future subpoenas and to
 19 prevent annoyance and potential invasion of his privacy rights. *See* Fed. R. Civ. Pro. 26(c).
 20

21 **VI. THE COURT SHOULD ISSUE SANCTIONS AGAINST ALAMEDA**
 22 **COUNTY AND OR COUNTY COUNSEL FOR OVERBURDENING OVERTON AND**
 23 **ABUSE OF PROCESS AND TO REIMBURSE OVERTON FOR HIS LOST WAGES**
 24 **AND EXPENSES OF DEFENDING THIS UNNECESSARY ACTION.**

25 Overton has, so far, lost one day's pay, (8 hours) at an hourly rate of 41.45, a total of lost
 26 wages, of 331.60. Overton may lose an additional day of pay for his appearance on March 15th,
 27 2011. Additionally, Overton has incurred expenses of \$40.00 for a process server, and has
 28 incurred other incidental expenses to travel about for the process server and to appear before this

1 Court to defend his privacy rights. Mr. Overton should be reimbursed for these expenses. (See
2 Overton Declaration, generally.)

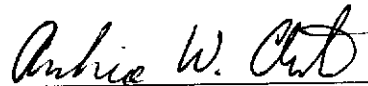
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4 **VII. CONCLUSION**

5 For the foregoing reasons, Overton respectfully requests that his Motion be granted, that
6 the subpoenas served on non-party medical providers be quashed, and that the Court issue a
7 protective order limiting the scope of discovery by preventing the County from seeking any
8 medical records for Overton in the future, and that the Court issue sanctions against Alameda
9 County and or County Counsel who have unfairly burdened Overton, and abused this Court's
10 subpoena power. The failure of this Court to reign in the conduct complained of here will only
11 invite further abuse, or condone the incompetence that lead to it. Please, Overton pleads, having
12 struggled to comply with the rules and always striving to do right because it is right, Overton has
13 a right to expect that this Court will require the same of its "officers" as well.

14
15 Respectfully submitted,

16 Dated: February 7th, 2011

Archie Overton

17 
18 Archie Overton
19 Pro Se